

DISTRICT OF COLUMBIA TAX COURT

FILED

APR 16 1970

District of Columbia
Tax Court

ELLEN U. FLYNN,)
)
Petitioner,)
)
v.) DOCKET NO. 2084
)
DISTRICT OF COLUMBIA,)
)
Respondent.)

FINDINGS, CONCLUSION AND OPINION

The issue is, whether petitioner was a resident of, or domiciled in, the District during the period January 1, 1966 - April 1, 1968 and therefore is subject to District income taxes for that period.

Petitioner lived in Miami, Florida from December, 1948 until April 1, 1968. She has been continuously employed by Pan American Airways since August 24, 1954. On January 10, 1966 she married Arthur G. Flynn in Washington, D. C. Mr. Flynn, a pressman, worked for the Miami Herald until that newspaper was struck in 1965, at which time he came here to work for the Washington Post "hoping I could go back to Miami rather than bring her up here, but the job never opened back up. It's still a nonunion shop." (Tr. 9.)

Petitioner has a daughter by a former marriage, Brenda Glenn, born in Florida on December 12, 1949. Brenda lived with her mother, went through the Miami schools, (graduating from senior high school in June, 1967) and is still there in college. Petitioner kept on living in Miami after her marriage to Mr. Flynn in order that Brenda could "graduate from high school first, and secondly, I had to wait until I could be transferred from

Miami to here with a job that was commensurate to the one I was holding in Miami." (Tr. 19.) Brenda "was having some school problems, personal problems, and I just didn't feel I could go off and leave her. I didn't want to change her school and her counsellor advised very strongly against her changing schools." (Tr. 32.)

Petitioner often came to Washington to be with her husband during the period of separation. Petitioner's mother stayed with Brenda on these trips. She used the airlines extensively because of her substantial discount as an airline employee. While here, she lived with her husband at his apartment. While in Miami, she lived with Brenda in her own apartment, for which she paid the rent. Occasionally, Mr. Flynn took leave without pay to go to Miami to be with his wife. "The only time I stayed down there for any length of time was when I was in the hospital with my back five or six weeks"; i.e., when he was sick, he went to Miami. (Tr. 7.)

After Brenda had graduated from high school, Mrs. Flynn asked Pan Am for a transfer to their Washington office. At first, Pan Am had no suitable openings here. But in March, 1968, she obtained the desired transfer beginning April 1, 1968, and has since resided in Washington.

Respondent's witness, Francis Karl Springer, of the Supervisory Revenue Office, testified as to the circumstances basing the assessments. It appears that when Mrs. Flynn was questioned as to her liability for District taxes --

she indicated that she got married to Arthur Flynn in January of 1966 and indicated to us that the only reason that kept her in Florida was the reason she could not find employment here in the District of Columbia with Pan Am at the same salary -- commensurate salary.

We prepared a return for the tax year 1967 based upon the demonstration of her intent * * *. (Tr. 38.)


Discussion. The very candid, forthright testimony of Mr. and Mrs. Flynn establishes beyond a shadow of doubt that Mrs. Flynn did not acquire residence or domicile in Washington until April 1, 1968. The practical reason should be clear to any responsible parent; in Mr. Flynn's words --

I thought it would be best if she stayed there, hoping my job would open back up and I could go down there with them instead of them coming up here, and we thought that her daughter's education was more important than our being together, any way. (Tr. 9.)

Of course Mr. and Mrs. Flynn both wanted to reside together; had she been able to do so, Mrs. Flynn would no doubt have come to live in Washington with her husband long before her actual move here. Contrary to the popular song, "wishes" do not "make it so". Domicile and residence for all purposes, including taxes, depend partly on subjective factors such as intent, and mostly on objective factors such as physical presence, e.g. the seven-months "place of abode" rule in our income tax statute, Code section 47-1551c(s). All of the objective indicia (which need not be detailed), most importantly those involving her daughter's schooling in Miami and her continuous employment in Miami, show that Mrs. Flynn did not lose her firmly established Florida residence and domicile until her move to the District April 1, 1968. See District of Columbia v. Davis, 125 U.S. App. D.C. 311, 371 F.2d 964. On the inapplicability of the common-law presumption that a wife's domicile follows that of her husband, see Oxley v. Oxley, 81 U.S. App. D.C. 346, 159 F.2d 10.

It has been stipulated that the amounts in issue for the tax years 1966, 1967 and (first three months of) 1968 total \$390.33, paid in full September 12, 1969, for which total, with interest,

decision will be entered for petitioner.


Robert M. Weston
Judge